

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

01/08/2002

CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

LC 2001-000180

FILED: \_\_\_\_\_

STATE OF ARIZONA

F TYLER RICH

v.

JOHN T PROFIRI

STEVEN D KEIST

PHX CITY MUNICIPAL COURT  
REMAND DESK CR-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. #8937023  
#8937021

Charge: CUSTODIAL INTERFERENCE  
CUSTODIAL INTERFERENCE

DOB: 08/22/63

DOC: 07/04/99

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

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This matter has been under advisement since the time of Oral Argument on December 19, 2001. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered and reviewed the record of the proceedings from the Phoenix City Court, the exhibits made of record, the Memoranda and argument of counsel.

Appellant was previously charged and found guilty of two counts of Custodial Interference, both class 1 misdemeanors in violation of A.R.S. Section 13-1302(A), on July 27, 2000. On August 22, 2000, Appellant was placed on probation for a period of three (3) years. As terms and conditions of probation Appellant was ordered to avoid any contact with Jill Reid or Chelsea Reid, and to report for a substance abuse screening, and to participate and cooperate in any programs of assistance, counseling or rehabilitation as directed after his substance abuse screening. Thereafter on November 15, 2000 the State filed a Petition to Revoke Appellant's probation, alleging that he had failed to attend and complete a substance abuse program. Appellant's probation revocation arraignment occurred January 29, 2001. A violation hearing was scheduled for March 9, 2001. The violation hearing occurred on March 9, and Appellant was found in violation of the terms of probation. At disposition on March 21, 2001, the trial court revoked Appellant's probation and sentenced him to serve 180 days in jail, with credit for 10 days time served. Appellant has filed a timely Notice of Appeal in this case.

The first issue raised by Appellant concerns the violation of Rule 27 time limits: Greater than 20 days elapsed between time of his revocation arraignment and the probation revocation hearing. Appellant does not cite any prejudice resulting from this delay, and it does not appear from the record Appellant did suffer any prejudice. In the absence of prejudice to a Defendant the violation of Rule 27, Arizona Rules of Criminal Procedure, time limits does not warrant reversal.<sup>1</sup>

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<sup>1</sup> See, State v. Belcher, 111 Ariz. 580, 535 P.2d 1297 (1975).  
Docket Code 512

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Appellant also challenges the sufficiency of the evidence to warrant the trial court's finding that he had violated the terms and conditions of probation. When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.<sup>2</sup> All evidence will be viewed in a light most favorable to sustaining a conviction and all reasonable inferences will be resolved against the Defendant.<sup>3</sup> If conflicts in evidence exists, the appellate court must resolve such conflicts in favor of sustaining the verdict and against the Defendant.<sup>4</sup> An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.<sup>5</sup> When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.<sup>6</sup> The Arizona Supreme Court has explained in State v. Tison<sup>7</sup> that "substantial evidence" means:

More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may

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<sup>2</sup> State v. Guerra, 161 Ariz. 289, 778 P.2d 1185 (1989); State v. Mincey, 141 Ariz. 425, 687 P.2d 1180, cert.denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); State v. Brown, 125 Ariz. 160, 608 P.2d 299 (1980); Hollis v. Industrial Commission, 94 Ariz. 113, 382 P.2d 226 (1963).

<sup>3</sup> State v. Guerra, supra; State v. Tison, 129 Ariz. 546, 633 P.2d 355 (1981), cert.denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

<sup>4</sup> State v. Guerra, supra; State v. Girdler, 138 Ariz. 482, 675 P.2d 1301 (1983), cert.denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

<sup>5</sup> In re: Estate of Shumway, 197 Ariz. 57, 3 P.3<sup>rd</sup> 977, review granted in part, opinion vacated in part 9 P.3<sup>rd</sup> 1062; Ryder v. Leach, 3 Ariz. 129, 77P. 490 (1889).

<sup>6</sup> Hutcherson v. City of Phoenix, 192 Ariz. 51, 961 P.2d 449 (1998); State v. Guerra, supra; State ex rel. Herman v. Schaffer, 110 Ariz. 91, 515 P.2d 593 (1973).

<sup>7</sup> SUPRA.

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fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.<sup>8</sup>

This Court finds that the trial court's determination that Appellant had violated the terms of his probation was not clearly erroneous and was supported by substantial evidence.

IT IS ORDERED affirming the revocation of Appellant's probation and the sentence imposed.

IT IS FURTHER ORDERED remanding this matter back to the Phoenix City Court for all further and future proceedings.

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<sup>8</sup> Id. At 553, 633 P.2d at 362.  
Docket Code 512